

United States Government

Department of Energy

memorandum

DATE: February 18, 2004

REPLY TO: Office of Pollution Prevention and Resource Conservation (EH-43):Fortune:6-7302

ATTN OF:

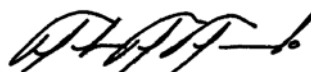
SUBJECT: EPA Proposed Rule: *Conditional Exclusions for Solvent-Contaminated Industrial Wipes*
Extension of the Comment Period

TO: Distribution

The purpose of this memorandum is (a) to inform Department of Energy (DOE) elements of the Environmental Protection Agency (EPA) decision to extend the comment period for the proposed rule regarding "Conditional Exclusions from Hazardous Waste and Solid Waste for Solvent-Contaminated Industrial Wipes" (*see* January 30, 2004; 69 *FR* 4463), and accordingly, (b) to offer DOE elements the opportunity to submit any additional comments in response to the proposed rule.

As discussed in the EH-43 notification memorandum in regard to the proposed rule,¹ EPA is proposing a conditional exclusion from the Resource Conservation and Recovery Act (RCRA) definition of hazardous waste for solvent-contaminated industrial wipes destined for disposal or combustion. In addition, EPA is proposing a conditional exclusion from the RCRA definition of solid waste for solvent-contaminated industrial wipes that are sent to laundries or dry cleaners for cleaning and reuse. For your information, the proposed rule (November 20, 2003; 68 *FR* 65586) is available for viewing at: <http://www.epa.gov/epaoswer/hazwaste/id/solvents/wipes-fr.pdf>.

EH-43 is in the process of developing a consolidated DOE response to the proposed rule. A copy of the current draft response is attached for your consideration. If you would like to submit any additional comments in regard to the proposed rule, please provide them to Bill Fortune of my staff (e-mail william.fortune@eh.doe.gov) by Tuesday, **March 2, 2004**. In developing your comments, please indicate the specific section and page of the preamble or proposed regulations to which each comment pertains. Questions regarding the proposed rule, or the effort to develop consolidated DOE comments, should be directed to Mr. Fortune at (202) 586-7302.



Thomas T. Traceski
Director
Office of Pollution Prevention
and Resource Conservation

Attachment

¹ See EH-43 Memorandum, Subject: EPA Proposed Rule: *Conditional Exclusions for Solvent-Contaminated Industrial Wipes*, November 20, 2003
(<http://www.eh.doe.gov/oepa/comments/rcra/solwipesrequest.pdf>).

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Hazardous Waste Remedial Action Program, (HAZWRAP)
Center for Environmental Management Information



**UNITED STATES
DEPARTMENT OF ENERGY**

**Comments On
*CONDITIONAL EXCLUSIONS FROM
HAZARDOUS WASTE AND SOLID WASTE
FOR SOLVENT-CONTAMINATED INDUSTRIAL WIPES***

**NOTICE OF PROPOSED RULEMAKING
(68 FR 65586; November 20, 2003)**

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**UNITED STATES DEPARTMENT OF ENERGY
COMMENTS ON
CONDITIONAL EXCLUSIONS FROM HAZARDOUS WASTE AND SOLID WASTE FOR
SOLVENT-CONTAMINATED INDUSTRIAL WIPES**

**NOTICE OF PROPOSED RULEMAKING
(68 FR 65586; November 20, 2003)**

GENERAL COMMENTS

1. The U.S. Department of Energy (DOE) appreciates the opportunity to review and comment on the U.S. Environmental Protection Agency (EPA or the Agency) notice that proposes to conditionally exclude from the definition of hazardous waste disposable industrial wipes that are contaminated with hazardous solvents and are going to disposal; and, to conditionally exclude from the definition of solid waste reusable industrial wipes that are contaminated with hazardous solvents and are sent for laundering or dry cleaning. In general, DOE supports EPA's effort to resolve, at the federal level, the long-standing issues associated with management of solvent-contaminated industrial wipes.
2. DOE urges EPA to consider expanding the scope of the proposed conditional exclusions to include contaminated personal protective equipment that is disposable or reusable (e.g., coveralls, lab coats, gloves).
3. DOE requests that the notice of final rulemaking discuss the relationship between the proposed conditional exclusions from the regulatory definitions of hazardous and solid waste for solvent-contaminated industrial wipes and the existing conditional exclusions from the regulatory definition of hazardous waste for low-level mixed waste storage, treatment, transportation and disposal [40 CFR 266, Subpart N]. DOE believes it may be possible for some solvent-contaminated industrial wipes to qualify for both conditional exclusions.
4. EPA proposes to incorporate regulatory text implementing the proposed conditional exclusions into the existing RCRA hazardous waste management regulations in three locations: 40 CFR 260.10 (definitions), 40 CFR 261.4(a)(22) (the conditional exclusion from the definition of solid waste), and 40 CFR 261.4(b)(19) (the conditional exclusion from the definition of hazardous waste). DOE notes that the proposed regulatory language goes beyond simply stating conditions that must be met by the waste generator in order to qualify for the exclusions. Specifically, definitions unique to the proposed exclusions are provided; management standards for generators are provided that vary depending on the intended destination of the excluded wipes; and management standards are provided for receiving facilities including municipal waste landfills and other non-hazardous waste landfills, non-landfill non-hazardous waste disposal facilities, laundries, dry cleaners, and handling facilities. The result is a fairly complex set of regulatory standards that differ from those in 40 CFR Parts 264 or 265 and are explicit to solvent-contaminated industrial wipes, some of which are destined for recycle. For this reason, DOE suggests that EPA consider relocating the final regulations in their entirety to 40 CFR Part 266, "Standards for Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities." This approach would be consistent with EPA's intended use of Part 266 (i.e., for tailored management standards [48 FR 14472 (April 4, 1983)]) and would facilitate access to the standards by the regulated community.

SPECIFIC COMMENTS (on the Preamble)

V. Detailed Discussion of Proposed Rule

V.B Conditions for Exclusion From the Definition of Hazardous Waste for Solvent-Contaminated Industrial Wipes Destined for Disposal

V.B.2 Proposed Conditions for Initial Storage and Accumulation

1. **p. 66595, cols. 1 through 3 – EPA proposes that generators be required to place solvent-contaminated industrial wipes in non-leaking, covered containers as a condition on the exclusion from the definition of hazardous waste. Such storage would be allowed to continue for an unlimited time period. As an alternative, EPA is considering setting accumulation time limits on this initial storage. Still another alternative being considered would be to rely on other regulatory statutes, like the Occupational Safety and Health Act (OSHA), which contain requirements for both storage container design and the length of time allowed for storage in containers of flammable liquids and combustible waste material and residues. The preamble specifically mentions that the storage container requirements in Title 29 of the *Code of Federal Regulations* (CFR), section 1910.106 may be applicable to industrial wipes prior to solvent removal or recovery.**

DOE recommends against the option of establishing a condition on the exclusion from the definition of hazardous waste that would rely on the regulatory requirements of non-RCRA statutes for limits on storage container design and accumulation times for solvent-contaminated industrial wipes. While DOE would not necessarily object to complying with the actual requirements specified in such non-RCRA regulations, the Department believes the accumulation time provisions in certain regulations (in particular the OSHA regulations) may be inappropriate. Specifically, DOE believes the purpose of the accumulation time limits in 29 CFR 1910 for flammable liquids and combustible waste material is fundamentally different from the purpose of the accumulation time limits in the RCRA hazardous waste generator regulations (40 CFR 262.34). This is evidenced by the significant difference between the accumulation time specified in 29 CFR 1910.106(e)(9)(iii) (i.e., one day) and the accumulation time specified in 40 CFR 262.34 (i.e., 90 days for large quantity generators and 180 days for small quantity generators). Whereas the regulations in 29 CFR 1910 are intended to ensure a safe workplace and primarily address the potential for spontaneous heating of flammable liquids and combustible waste material, the regulations in 40 CFR 262.34 are intended to protect human health and the environment from releases of hazardous constituents caused from mismanagement of waste materials over time. Because their purposes are fundamentally different, DOE submits that they should not be considered interchangeable.

V.B.3 Proposed Conditions for Containers Used for Transportation

V.B.3.b Other Option

1. **pp. 66596, col. 3 and 66597, col. 1, Closed Containers – EPA is proposing that industrial wipes that are excluded from the definition of hazardous waste must be transported in containers “designed, constructed, and managed to minimize loss to the environment.” In addition, the Agency is considering the option of requiring all**

generators of solvent-contaminated industrial wipes to transport them in impermeable closed containers with lids that screw onto the tops and are sealed. The NPRM indicates EPA's belief that such closed containers would minimize loss to the environment.

DOE supports the approach of establishing a performance standard as a condition for containers used to transport solvent-contaminated industrial wipes that are excluded from the definition of hazardous waste. Thus, DOE agrees that specifying impermeable closed containers with sealed lids should not be required for transport of solvent-contaminated industrial wipes that are conditionally excluded from the definition of hazardous waste. The performance standard approach would provide greater flexibility in the choice of transport container design while ensuring the protectiveness of any container design capable of meeting the condition. Notwithstanding, the Department urges EPA to provide guidance by describing what would be needed to demonstrate compliance with the proposed performance standard requiring that transportation containers be "designed, constructed and managed to minimize loss to the environment." Specifically, DOE requests that the notice of final rulemaking identify and explain the criteria to be used in the demonstration if a transportation container design without a sealed lid were to be used.

V.B.5 Proposed Condition for Transportation to a Municipal or Other Non-Hazardous Landfill

V.B.5.a Proposed Condition

1. **pp. 65597, col. 3 and 65598, cols. 1 & 2 (above Table 5) – EPA proposes to continue prohibiting disposal in municipal and other non-hazardous waste landfills of industrial wipes that exhibit the toxicity characteristic (TC) for six solvents. The preamble indicates that EPA is taking this approach because, even when wipes contaminated with these six solvents have been through an advanced solvent-extraction process and contain less than 5 grams of solvent, the wipes remain likely to exhibit the TC. EPA requests comment on whether "dry" wipes that exhibit the TC for a solvent should continue to be prohibited from disposal in municipal and other non-hazardous waste landfills even though the EPA risk screening analysis indicates that no significant risk would be posed by such disposal.**

DOE supports the concept of classifying and managing a waste consistent with the level of risk it poses to human health and the environment when land disposed. Accordingly, DOE encourages EPA to continue its efforts to develop a risk-based approach for regulating all hazardous waste. Notwithstanding, since a generic risk-based regulatory approach has not been developed yet, DOE supports EPA's current proposal to maintain consistency within the existing program by continuing to prohibit disposal in municipal and other hazardous waste landfills of wipes that exhibit the TC for a solvent.

V.B.6 Proposed Condition for Transportation to Non-Land Disposal Facilities

V.B.6.b Other Option

1. **p. 65599, cols. 2 & 3 – EPA is considering requiring solvent-contaminated industrial wipes to meet a "no free liquids when wrung" condition instead of a "no free liquids" condition before being sent for disposal at a non-land disposal unit or for further processing to meet the "dry" condition for disposal in a municipal or other non-hazardous waste landfill. The**

“no free liquids when wrung” condition would require that each wipe not drip solvent when hand wrung. EPA requests comment on whether the benefits of wringing solvent-contaminated wipes would outweigh the concerns raised by stakeholders about the hand wringing process.

DOE believes the benefits of hand wringing industrial wipes would not outweigh the concerns. DOE agrees with the stakeholder concerns summarized in the preamble, which include the following: (1) such a requirement would be a substantial change from current state policies on free liquids and would be burdensome for generators to implement; (2) contaminated wipes would be exposed to the air more than necessary; and (3) wringing would need to be performed immediately prior to placement of the wipes on the shipping vehicle, which would further burden generators. In addition, DOE is concerned that wringing to detect the presence of free liquids is not a reproducible test. Therefore, DOE encourages EPA not to adopt “no free liquids when wrung,” instead of “no free liquids,” as a condition for exclusion from the definition of hazardous waste for wipes being sent for disposal at a non-land disposal facility or for further processing to meet the “dry” condition.

V.B.6.d How Can Generators Meet the “No Free Liquids” Condition?

- 1. pp. 65599, col. 3 and 65600, col. 1 – EPA proposes that solvent-contaminated industrial wipes being sent for disposal at a non-land disposal unit or for further processing to meet the “dry” condition for disposal in a municipal or other non-hazardous waste landfill be required to contain “no free liquids.” This “no free liquids” condition would require that liquid solvent not drip from an industrial wipe when it is held for a short time and that no standing liquids be present in the bottom of the transportation container. EPA does not specify a particular method for verifying compliance with the “no free liquids” condition.**

As is also discussed in Specific Comment 3.a (on the Proposed Regulatory Text) (see page 10, below), DOE suggests that EPA delete the proposed definition of the term “no free liquids” from the final rule because a definition of “free liquids” is already provided in 40 CFR 260.10. DOE believes that the final regulations concerning hazardous industrial wipes should specify criteria for determining whether free liquids, as already defined in 40 CFR 260.10, are absent from wipes, rather than creating a separate new definition for the phrase “no free liquids.” This approach would be consistent with other existing sections of the RCRA hazardous waste regulations that prohibit the presence of free liquids. For example, 40 CFR 264.190 indicates that certain tank systems used to treat or store hazardous waste containing “no free liquids” are exempt from the requirements in 40 CFR 264.193. According to 40 CFR 264.190(a), the absence or presence of free liquids in waste treated/stored in the tank systems of interest must be demonstrated using Method 9095 (Paint Filter Liquids Test) as described in “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,” EPA Publication SW-846. A similar example appears in 40 CFR 264.314, which prohibits placement of any hazardous waste containing free liquids in a landfill. In this example, 40 CFR 264.314(c) indicates that the absence or presence of free liquids must be demonstrated using the Paint Filter Liquids Test. As criteria for demonstrating the absence or presence of free liquids with respect to the solvent-contaminated industrial wipes, DOE supports the suggestion made by the printing industry (p. 65600, col. 1) that one or more technologies (i.e., quantitative and reproducible compliance tests) considered to be adequate should be specified. This would minimize misunderstandings and confusion over whether compliance has been achieved and would be consistent with other RCRA hazardous waste regulations applicable to containerized hazardous wastes.

V.B.8 Generators That Remove Solvent From Industrial Wipes

Conditional Exclusions for Solvent-Contaminated Wipes

DRAFT Comments – 18 February 2004

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DO NOT QUOTE OR CITE

V.B.8.b Regulatory Status of Solvent Removal Technologies

1. **p. 65600, col. 3** – The NPRM explains that solvent-contaminated industrial wipes would not be hazardous waste at the time they undergo solvent-removal by either the generator or a handling facility. Therefore, solvent removal technologies would not be considered hazardous waste treatment under RCRA and would not require a RCRA permit. Furthermore, according to the NPRM, under the proposed regulations, solvent extraction “would not trigger RCRA treatment standards.”

DOE notes that, the mandate to comply with RCRA Land Disposal Restrictions (LDR) treatment standards is determined at the point a hazardous waste is generated, not at the point of treatment or disposal. Hence, the fact that a hazardous waste is no longer hazardous at its point of treatment or disposal is not relevant to evaluating the applicability of the LDR treatment standards. This has been the rule since promulgation of the first LDR treatment standards in 1986 [51 FR 40620; November 7, 1986]. On page 65595 of the preamble to the proposed rule (col.1, sec. V.B.2.a), EPA states that “The proposed conditional exclusion from the definition of hazardous waste would apply to solvent-contaminated disposable industrial wipes *at the point when the wipes are discarded by the generator*” (emphasis added). This statement suggests that the exclusion may not apply to a solvent-contaminated industrial wipe until some point after the wipe is generated, depending on the meaning of the phrase “discarded by the generator.” Accordingly, DOE requests that the notice of final rulemaking explain more fully the meaning of the phrase “discarded by the generator,” especially as it relates to the point of generation for disposable, solvent-contaminated industrial wipes and to the need to address compliance with the LDR treatment standards in the conditions for exclusion from the regulatory definition of hazardous waste.

V.B.9 Proposed Conditions for Intra-Company Transfers

V.B.9.a Proposed Condition

1. **pp. 65600, col. 3 and 65601, col. 1** – The NPRM proposes to allow industrial wipes to qualify for the exclusion from the definition of hazardous waste if the generator facility transfers solvent-contaminated industrial wipes containing free liquids to another facility owned by the same company, if the receiving facility has a solvent-extraction and/or -recovery process that will remove sufficient solvent to ensure the wipes meet either the “dry” condition or the “no free liquids” condition.

DOE supports the proposed conditional exclusion from the definition of hazardous waste during intra-company transfers of solvent-contaminated industrial wipes containing free liquids, if the receiving facility has a solvent-extraction and/or -recovery process, and requests confirmation that the exclusion would be available during transfers from one facility owned by a federal agency to a receiving facility owned by the same federal agency.

2. **p. 65601, col. 1** – EPA seeks comment on whether transfers of industrial wipes between a generator facility and a facility having a solvent-extraction and/or -recovery process should be eligible for the exclusion from the definition of hazardous waste for solvent-contaminated industrial wipes containing free liquids if the receiving facility is an affiliate, subsidiary, or parent company of the generator facility, or vice versa.

DOE believes solvent recovery would be further encouraged if transfers of solvent-contaminated industrial wipes containing free liquids from a generator facility to solvent-extraction and/or -recovery processes located at affiliate, subsidiary, or parent companies were allowed to be eligible for the exclusion from the definition of hazardous waste. Thus, DOE supports extending the proposed intra-company transfer exclusion to include such transfers.

V.B.9.c Request for Comment

1. **p. 65601, col. 3 – EPA seeks comment on whether the conditional exclusion for intra-company transfers of solvent-contaminated industrial wipes containing free liquids should be extended to inter-company transfers between generator facilities and third-party facilities that operate solvent-extraction and/or -recovery processes.**

DOE believes that extending the proposed conditional exclusion for intra-company transfers of solvent-contaminated industrial wipes containing free liquids to inter-company transfers would further encourage solvent recovery. Thus, DOE supports including an inter-company transfer exclusion in the final rule.

V.B.10 Proposed Conditions for Management at Handling Facilities

V.B.10.b Request for Comment

1. **p. 65602, cols. 1 & 2 – EPA requests comment on whether handling facilities receiving shipments of wipes that do not meet the “no free liquids” condition should be required to submit a notification to the state or EPA region implementing RCRA to inform them that the “no free liquids” condition had not been met.**

DOE believes a handling facility that receives a shipment of wipes that does not meet the “no free liquids” condition should not be required to notify the state or EPA region, unless the handling facility could not meet the conditions placed on it that would allow the wipes to remain excluded from the definition of hazardous waste. As proposed, there would be two such conditions. First, the receiving facility would be required to store the solvent-contaminated industrial wipes either (a) in containers designed, constructed, and managed to minimize loss to the environment (i.e., containers that would meet the condition for off site transport of conditionally excluded solvent-contaminated industrial wipes), or (b) in non-leaking, covered containers (i.e., containers that would meet the condition for initial storage and accumulation by the generator). Second, if an incoming container of solvent-contaminated industrial wipes were to contain free liquids, the receiving facility would be required to either (a) return the container (with the wipes and liquid) to the generator as soon as reasonably practicable, or (b) recover any liquid solvent from the container and properly manage it under applicable federal or state hazardous waste regulations. If the receiving facility would be unable to meet these two conditions, DOE believes the facility should be required to notify the state or EPA region because the incoming solvent-contaminated industrial wipes would have become hazardous waste that would be subject to full RCRA regulation.

V.C Conditions for the Exclusion From the Definition of Solid Waste for Reusable Industrial Wipes

V.C.3 Proposed Conditions for Initial Storage and Accumulation

V.C.3.b Other Option

1. **p. 65604, col. 2** – As with disposable industrial wipes, EPA is proposing a condition for accumulating reusable solvent-contaminated industrial wipes in covered containers at the generator's facility. In addition, EPA is considering the option of not requiring a RCRA-specific condition to be met for storage and accumulation of reusable solvent-contaminated industrial wipes and instead relying on OSHAct regulations and any other applicable statutes.

As was stated in Specific Comment V.B.2, the Department believes the accumulation time provisions in certain regulations (in particular the OSHAct regulations) may be inappropriate when applied to the storage and accumulation of reusable solvent-contaminated industrial wipes. The OSHAct regulations primarily address the potential for spontaneous heating of flammable liquids and combustible waste material rather than the potential for releases of hazardous constituents, which is the primary focus of the generator accumulation time limits in the RCRA hazardous waste regulations. Accordingly, if EPA decides that, in addition to storage container design standards, accumulation time limits are needed as a condition on initial storage of solvent-contaminated industrial wipes claiming the exclusion from the definition of solid waste, DOE recommends that the condition specify explicit accumulation time limits to address the primary concern, rather than reference or rely on the OSHAct or other non-RCRA regulations.

V.C.4 Proposed Conditions for Containers Used for Transportation

V.C.4.a Proposed Condition

1. **p. 65604, col. 2** – The NPRM proposes that facilities that transport reusable solvent-contaminated industrial wipes off site to an industrial laundry, a dry cleaner, or a facility that removes solvents from industrial wipes prior to cleaning must do so in containers that are designed, constructed and managed to minimize loss to the environment.

As was stated in Specific Comment V.B.3.b, DOE urges EPA to provide guidance by describing what would be needed to demonstrate compliance with the proposed performance standard requiring that transportation containers be “designed, constructed and managed to minimize loss to the environment.” Specifically, DOE requests that the notice of final rulemaking explain the criteria to be used in the demonstration if a transportation container design without a sealed lid is proposed.

V.C.5 Proposed Condition for Transportation to Laundry, Dry Cleaner, or Handler

V.C.5.b Other Option

1. **p. 65605, col. 2** – EPA is considering requiring conditionally excluded, reusable, solvent-contaminated industrial wipes to meet a “no free liquids when wrung” condition instead of a “no free liquids” condition before being sent to a laundry, dry cleaner, or handler for cleaning. This condition would require that each wipe, when hand wrung at any time after its use until it is laundered, could not drip solvent.

For the reasons stated in Specific Comment V.B.6.b, item 1, DOE encourages EPA not to adopt “no free liquids when wrung,” instead of “no free liquids,” as a condition for exclusion from the definition of solid waste for reusable wipes being sent to a laundry, dry cleaner, or handler for cleaning.

V.C.5.d How Can Generators Meet the “No Free Liquids” Condition?

1. **p. 65605, col. 3 – The NPRM indicates that the measures that a generator can take to meet a “no free liquids” condition are the same for reusable wipes as for disposable wipes.**

As was stated in Specific Comment V.B.6.d, item 1, DOE believes that the final regulations concerning hazardous industrial wipes should specify criteria for determining whether free liquids, as already defined in 40 CFR 260.10, are absent from wipes, rather than creating a separate new definition for the phrase “no free liquids.” As criteria for demonstrating the absence or presence of free liquids with respect to the solvent-contaminated industrial wipes, DOE supports the suggestion made by the printing industry (p. 65600, col. 1) that one or more technologies (i.e., quantitative and reproducible compliance tests) considered to be adequate should be specified. This would minimize misunderstandings and confusion over whether compliance has been achieved and would be consistent with other RCRA hazardous waste regulations applicable to containerized hazardous wastes.

V.C.8 Proposed Conditions for Intra-Company Transfers

1. **p. 65606, col. 1 – EPA seeks comment on whether intra-company shipments of industrial wipes containing free liquids should be allowed under the conditions of the exclusion from the definition of solid waste.**

DOE supports the proposed conditional exclusion from the definition of solid waste during intra-company transfers of reusable, solvent-contaminated industrial wipes containing free liquids, if the receiving facility has a solvent-extraction and/or -recovery process, and requests confirmation that the exclusion would be available during transfers from one facility owned by a federal agency to a receiving facility owned by the same federal agency.

2. **p. 65606, col. 1 – EPA seeks comment on whether the proposed conditional exclusion from the definition of solid waste for reusable, solvent-contaminated industrial wipes during intra-company transfers should be expanded to allow such wipes to be sent with free liquids to third-party solvent-extraction facilities.**

DOE believes that extending the proposed conditional exclusion for intra-company transfers of reusable, solvent-contaminated industrial wipes containing free liquids to inter-company transfers would further encourage solvent recovery. Thus, DOE supports including an inter-company transfer exclusion in the final rule.

SPECIFIC COMMENTS (on the Proposed Regulatory Text)

1. **p. 65618, col. 2, Definition of “Disposable industrial wipe” – The term “disposable industrial wipe” would be defined to mean “an industrial wipe that is disposed after use without being sent to a laundry or dry cleaner for cleaning and reuse.”**

DOE suggests omitting the proposed definition of the term “disposable industrial wipe” from the final rule. While this phrase was used frequently throughout the preamble of the NPRM, its only appearance in the proposed regulatory text is in the “Definitions” section.

2. **p. 65618, col. 3, Definition of “Intra-company transfer of industrial wipes”** – The term “intra-company transfer of industrial wipes” would be defined to mean “the off site transportation of industrial wipes from a generator facility to another generator-owned facility that has a solvent extraction and/or recovery process for the purpose of removing sufficient solvent to ensure that the wipes contain no free liquids or less than 5 grams of solvent, as appropriate.”

DOE suggests that the proposed definition of the term “intra-company transfer of industrial wipes” be simplified and harmonized with other proposed definitions, as follows [redline font = addition; ~~strikeout~~ font = deletion]:

Intra-company transfer of industrial wipes means the offsite transportation of ~~solvent-contaminated~~ industrial wipes from a generator facility to ~~another generator-owned~~ a ~~separate industrial wipes handling~~ facility ~~owned by the same generator~~ that has a solvent extraction and/or recovery process for the purpose of removing sufficient solvent to ensure that the wipes contain no free liquids or less than 5 grams of solvent, as appropriate.

3. **p. 65618, col. 3, Definition of “No free liquids”** – The term “no free liquids,” as used in 40 CFR 261.4(a)(22) and 40 CFR 261.4(b)(19) would be defined to mean “that no liquid solvent may drip from industrial wipes, and that there is no liquid solvent in the container holding the wipes. Wipes that have been subjected to solvent extraction are presumed to contain no free liquids.”
 - a. DOE suggests omitting the proposed definition of the term “no free liquids” from the final rule. Since a definition of “free liquids” is already provided in 40 CFR 260.10, DOE believes it would be more appropriate to provide a regulatory section that indicates criteria for demonstrating whether or not free liquids are present in solvent-contaminated industrial wipes than to provide a new definition of the term “no free liquids.” As was discussed in Specific Comment V.B.6.d, item 1, this alternative approach would be consistent with existing sections of the RCRA regulations that prohibit the presence of free liquids. As criteria for demonstrating the absence or presence of free liquids with respect to the solvent-contaminated industrial wipes, DOE supports the suggestion made by the printing industry (p. 65600, col. 1) that one or more technologies (i.e., quantitative and reproducible compliance tests) considered to be adequate should be specified. This would minimize misunderstandings and confusion over whether compliance has been achieved and would be consistent with other RCRA hazardous waste regulations applicable to containerized hazardous wastes.
 - b. If the definition of the term “no free liquids” is not included in the final regulations, DOE suggests that the last sentence of the proposed definition (i.e., “Wipes that have been subjected to solvent extraction are presumed to contain no free liquids.”) be incorporated as a subsection within the new regulatory section that would indicate criteria, as suggested in item 3.a, above, for demonstrating whether or not free liquids are present in solvent-contaminated industrial wipes.

4. **p. 65618, col. 3, Definition of “Reusable industrial wipe”** – The term “reusable industrial wipe” would be defined to mean “an industrial wipe that after being used is sent to a laundry or dry cleaner for cleaning and reuse.”

DOE suggests omitting the proposed definition of the term “reusable industrial wipe” from the final rule. While this phrase was used frequently throughout the preamble of the NPRM, its only appearance in the proposed regulatory text is in the “Definitions” section.

5. **pp. 65618, col. 3 and 65619, col. 1, Introductory text in proposed subsection 40 CFR 261.4(a)(22)** – The NPRM proposes adding new subsection (22) to 40 CFR 261.4(a). The introductory text in the proposed subsection would read as follows: “Industrial wipes that are sent to an industrial laundry, to a dry cleaner for cleaning, or to an industrial wipes handling facility when they contain an F-listed spent solvent, a corresponding spilled P- or U-listed commercial chemical product, or when they exhibit the hazardous characteristic of ignitability, corrosivity, reactivity or toxicity when that characteristic results from *the F-listed spent solvent or corresponding P- or U-listed commercial chemical products*, provided that the conditions specified below are satisfied by the facility claiming the exclusion: ...” (emphasis added).

DOE suggests omitting the phrase “the F-listed spent solvent or,” which is emphasized in the above quote, because it seems unnecessary. All industrial wipes that contain F-listed spent solvents, whether or not such wipes exhibit a hazardous characteristic resulting from the F-listed solvent, are already included within the scope of the proposed conditional exclusion by virtue of the phrase “when they contain an F-listed spent solvent.” DOE is not aware of any circumstance in which an additional industrial wipe containing an F-listed spent solvent might be brought within the scope of the proposed conditional exclusion solely because the F-listed solvent caused the wipe to exhibit a hazardous characteristic.

6. **p. 65619, col. 1, Regulatory status of liquids recovered from solvent-contaminated industrial wipes** – Proposed 40 CFR 261.4(a)(22)(iii) would require, in part, that “[a]ny liquids removed from the industrial wipes [using solvent extraction] must be managed according to the regulations found under 40 CFR parts 261 through 268 and 270 *if discarded*” (emphasis added). Proposed 40 CFR 261.4(a)(22)(iv)(B) would require that “The receiving facility [in an intra-company transfer of industrial wipes for the purpose of removing enough free liquids from wipes to meet the “no free liquids” condition] must manage the extracted solvent according to regulations found under 40 CFR parts 261 through 268 and 270.”

DOE notes that proposed 40 CFR 261.4(a)(22)(iv)(B) would require liquids recovered from a solvent extraction process at an industrial wipes handling facility to be managed in accordance with the RCRA hazardous waste regulations, regardless of whether such liquids would be discarded or recycled. In contrast, proposed 40 CFR 261.4(a)(22)(iii) would require that liquids recovered from an onsite solvent extraction process at a generator facility be managed in accordance with the RCRA hazardous waste regulations only if such liquids would be discarded. DOE suggests that these two sections be harmonized in the final regulations.

7. **p. 65619, col. 2, Regulatory status of free liquids in incoming containers at laundries, dry cleaning facilities, and industrial wipes handling facilities** – Proposed 40 CFR 261.4(a)(22)(vi)(A) would require that free liquids removed from incoming containers at

laundries, dry cleaning facilities, or industrial wipes handling facilities, must be managed “according to the regulations found under 40 CFR parts 261 through 268 and 270.”

DOE suggests that proposed 40 CFR 261.4(a)(22)(vi)(A) be modified to be consistent in the final regulations with 40 CFR 261.4(a)(22)(iii) and 40 CFR 261.4(a)(22)(iv)(B) (see preceding item 6).

8. **p. 65619, col. 2, Regulatory status of sludge from laundries and dry cleaning facilities – Proposed 40 CFR 261.4(a)(22)(vii) states that “[i]ndustrial laundries and dry cleaners may dispose of sludge from cleaning industrial wipes in solid waste landfills if the sludge does not exhibit a hazardous waste characteristic.”**

DOE believes that provision in proposed 40 CFR 261.4(a)(22)(vii) should not be presented in the final regulations as a condition that must be “satisfied by the facility claiming the exclusion.” This provision is not appropriate as a condition for claiming the exclusion because it does not apply to the handling of solvent-contaminated industrial wipes.

9. **p. 65619, col. 2, Introductory text in proposed subsection 40 CFR 261.4(b)(19) – The NPRM proposes adding new subsection (19) to 40 CFR 261.4(b). The introductory text in the proposed subsection would read as follows: “Industrial wipes that are sent for disposal to a municipal waste landfill or other non-hazardous waste landfill that meets the standards under 40 CFR part 257, subpart B, to a municipal waste combustor or other combustion facility, or to an industrial wipes handling facility when they contain an F-listed spent solvent, a corresponding spilled P- or U-listed commercial chemical product, or when they exhibit the hazardous characteristic of ignitability, corrosivity, reactivity or toxicity when that characteristic results from the F-listed spent solvent or corresponding P- or U-listed commercial chemical products, provided that the conditions specified below are satisfied by the facility claiming the exclusion: ...” (emphasis added).**

DOE suggests omitting from the final rule the phrase “the F-listed spent solvent or,” which is emphasized in the above quote. As was explained in the Specific Comment (on the proposed regulatory text), item 5, all industrial wipes that contain F-listed spent solvents, whether or not such wipes exhibit a hazardous characteristic resulting from the F-listed solvent, are already included within the scope of the proposed conditional exclusion by virtue of the phrase “when they contain an F-listed spent solvent.” DOE is not aware of any circumstance in which an additional industrial wipe containing an F-listed spent solvent might be brought within the scope of the proposed conditional exclusion solely because the F-listed solvent caused the wipe to exhibit a hazardous characteristic.

10. **p. 65619, col. 2, Limitation on amount of solvent destined for land disposal – Proposed 40 CFR 261.4(b)(19)(iv)(A) states that solvent-contaminated industrial wipes destined for a municipal landfill or other non-hazardous waste landfill that meets the standards under 40 CFR part 257, subpart B “[m]ust contain less than 5 grams of solvent each, or must have been treated by solvent extraction” (emphasis added).**

DOE suggests that the phrase “or must have been treated by solvent extraction,” which is emphasized in the proposed regulatory text quoted above, be omitted from the final regulations. As used in the quoted regulatory text, this phrase appears to create a presumption that wipes subjected to solvent extraction would contain less than 5 grams of solvent (i.e., would be “dry,” as explained on p. 65598). Hence, if the

proposed section 40 CFR 261.4(b)(19)(iv)(A) remains unchanged, the resulting final regulatory provision will be inconsistent with the proposed definition of the term “no free liquids,” which creates the presumption that wipes subjected to solvent extraction would contain no free liquids (i.e., would not contain liquids which readily separate from the solid portion of a waste under ambient temperature and pressure). Under the former presumption, wipes treated by solvent extraction would be presumed to contain much less solvent than under the latter presumption.

11. **p. 65619, col. 3, Regulatory status of liquids recovered from solvent-contaminated industrial wipes** – The proposed section 40 CFR 261.4(b)(19)(v) would require, in part, that “[a]ny liquids removed from the wipes [using solvent extraction] must be managed as hazardous wastes according to regulations found under 40 CFR parts 261 through 268 and 270 *if disposed*” (emphasis added). Proposed 40 CFR 261.4(b)(19)(vi)(B) would require that “The receiving facility [in an intra-company transfer of industrial wipes for the purpose of removing enough free liquids from wipes to meet either the “no free liquids” condition or the “less than 5-grams of solvent” condition] must manage the extracted solvent according to regulations found under 40 CFR parts 261 through 268 and 270.”

DOE notes that proposed 40 CFR 261.4(b)(19)(vi)(B) would require liquids recovered from a solvent extraction process at an industrial wipes handling facility to be managed in accordance with the RCRA hazardous waste regulations, regardless of whether such liquids would be discarded or recycled. In contrast, proposed 40 CFR 261.4(b)(19)(v) would require that liquids recovered from an onsite solvent extraction process at a generator facility be managed in accordance with the RCRA hazardous waste regulations only if such liquids would be disposed. DOE suggests that these two sections be harmonized in the final regulations.

12. **p. 65619, col. 3, Regulatory status of free liquids in incoming containers at combustion facilities and industrial wipes handling facilities** – The proposed section 40 CFR 261.4(b)(19)(viii)(A) would require that free liquids removed from incoming containers at a combustion facility or an industrial wipes handling facility, must be managed “according to regulations found under 40 CFR parts 261 through 268 and 270.”

DOE suggests that proposed 40 CFR 261.4(b)(19)(viii)(A) be modified to be consistent in the final regulations with 40 CFR 261.4(b)(19)(v) and 40 CFR 261.4(b)(19)(vi)(B) (see preceding item 11).